

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection any copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 27, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36532; File No. SR-NASD-95-58]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Date of Implementation of the NASD's Primary Market Maker Standards and the Duration of the Pilot Program for the NASD's Short Sale Rule

November 30, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 27, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. As discussed below, the Commission has also granted accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD is proposing to delay, from December 1, 1995 to February 1, 1996, the implementation date of the Primary Market Maker standards to be used to determine the eligibility of market makers for an exemption from the NASD's short-sale rule. The NASD also proposes to extend the termination date for the pilot period to August 3, 1996 instead of June 3, 1996. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

Article III, Section 1

* * * * *

Section 48

(1)(3) Until *February 1, 1996* [December 1, 1995], the term "qualified market maker" shall mean a registered Nasdaq market maker that has maintained, without interruption, quotations in the subject security for the preceding 20 business days.

* * * * *

Beginning *February 1, 1996* [December 1, 1995], the term "qualified market maker" shall mean a registered Nasdaq market maker that meets the criteria for a Primary Nasdaq Market Maker as set forth in Article III, Section 49 of the Rules of Fair Practice.

* * * * *

(m) This section shall be in effect until *August 3, 1996* [June 3, 1996].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A., B., and C. below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 29, 1994, the SEC approved the NASD's short-sale rule applicable to short sales in Nasdaq National Market securities on an eighteen-month pilot basis through March 5, 1996.² The NASD's short-sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by the Nasdaq system whenever that bid is lower than the previous inside bid.³ The rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time). As approved by the Commission, during the first year that the rule has been in effect (from September 6, 1994 to September 6, 1995), Nasdaq market makers who maintained a quotation in a particular Nasdaq National Market security for 20 consecutive business days without interruption are exempt from the rule for short sales in that security, provided that the short sales were made in connection with bona fide market making activity ("the 20-day" test). For the next six months of the 18-month pilot period (*i.e.*, September 6, 1995 through March 5, 1996), the "20-day" test for market maker exemptions from the rule was scheduled to be replaced with a four-part quantitative test known as the "Primary Market Maker (PMM) Standards."

Under the PMM Standards, to be eligible for an exemption from the short-sale rule, a market maker must satisfy at least two of the following four criteria: (1) The market maker must be at the best bid or best offer as shown on the Nasdaq

² See Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

³ A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

system no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes $1\frac{1}{2}$ times its "proportionate" volume in stock.⁴ If a market maker is a PMM for a particular stock, there will be a "P" indicator next to its quote in that stock. In addition, market makers will be able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed commencing on the next business day following notice of failure to comply with the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards for the next review period.

As noted above, the PMM standards were originally scheduled to go into effect on September 6, 1995. However, because of unforeseen delays in the programming of the PMM standards, the NASD proposed and the SEC approved a delay in the effective date of the PMM standards until December 1, 1995.⁵ With the instant filing, the NASD is proposing a further delay of the implementation date for the PMM standards. Specifically, because of recently detected errors in a segment of the NASD's software used to calculate whether market makers are satisfying the PMM standards, the NASD is proposing to delay the effective date of the PMM standards until February 1, 1996.

With the proposed delay, a market maker's trading activity during the month of January 1996 will be evaluated according to the PMM standards to determine if it can retain its exemption until February 1996. Until January 31, 1996, the 20-day test will continue to be used to evaluate market makers' eligibility for an exemption from the rule. Thus, beginning February 1, 1996, a "P" indicator will be displayed next to every PMM that is exempt from the

rule according to the new PMM standards.

Because implementation of the PMM standards will be delayed under the proposal, the NASD is also proposing to extend the pilot period for the rule so that there is sufficient time to evaluate the effectiveness and impact of the PMM standards and the effectiveness of the short sale rule with the PMM standards in place. Specifically, the NASD proposes to extend the termination date for the pilot program until August 3, 1996.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assumes equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. Specifically, the NASD believes that continuing the operation of the present "20-day" test until the PMM standards are in place will ensure that the liquidity provided to the market by virtue of the market maker exemption will not be diminished. In addition, the NASD believes that continuation of the "20-day" test until the PMM standards are in place would avoid the confusion in the marketplace that would result if the market maker exemption were to lapse for two months and then be reinstated. Finally, the NASD believes that extending the pilot period for the short-sale rule will enhance the quality of studies analyzing the effectiveness of the rule and help to ensure that future regulatory action taken with respect to the rule is based on a greater knowledge and understanding of the rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

The NASD has requested, however, that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

As discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act. Further, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of filing in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate in that it will permit the NASD to provide interested persons adequate notice that implementation of the PMM standards will be delayed until February 1, 1996 and that the expiration of the short sale rule, including the PMM standards, will be extended until August 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

As discussed in the Original Approval Order, the Commission believed and continues to believe that the imposition for a limited time of a short sale rule and accompanying PMM standards applicable to Nasdaq National Market securities is consistent with the requirements of Sections 15A(b) (6), 15A(b) (9) and 15A(b) (11) of the Act.⁶

⁴ Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

⁵ See Securities Exchange Act Release No. 36171 (Aug. 30, 1995), 60 FR 46651 (Sept. 7, 1995).

⁶ 15 U.S.C. § 78o-3(b)(6), (9) and (11). Section 15A(b) (6) requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. 15 U.S.C. § 78o-3(b) (6). Sections 15A(b) (9) and (11) require that the NASD's rule be designed not to impose any burden on competition not necessary or appropriate in

As discussed below, the Commission believes that delayed implementation of the PMM standards until February 1, 1996 and limited extension of the short sales rule until August 3, 1996 (rather than June 3, 1996) is consistent with the Act and the rules and regulations promulgated thereunder.⁷

Maintaining the current operation of the short sale rule until the NASD has completed and tested the systems necessary to provide market participants adequate notice of a market maker's PMM status will avoid confusion in the marketplace and assure consistency in the application of NASD rules. Moreover, extension of the short sale rule until August 3, 1996 will maintain the effectiveness of the PMM standards for six months, as envisioned by the Commission's Original Approval Order. As noted in the Original Approval Order, this will provide the Commission and the NASD the opportunity to study the effects of the rule and its exemptions and to determine whether these are practicable and necessary on an ongoing basis, or whether other alternatives would be more appropriate.

In the Original Approval Order, the Commission stated that experience with the NASD's short sale rule may demonstrate that some or all of the elements of the rule require reconsideration. The Commission notes that this is the NASD's second proposal to extend the operation of the short sale rule due to technical problems associated with the implementation of the PMM designation. The Commission is concerned about the delay in implementing the PMM designation which inhibits the ability to assess the effects of the short sale rule with the designation in place and, thus, expects that no further delays will be necessary.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

furtherance of the Act, *id.* § 78o-3(b) (9), and to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing and publishing quotations. *Id.* § 78o-3(b) (11). In addition, the Commission believes that the rule change will further the goals of Section 11A in that it will promote efficient and effective market operations and economically efficient execution of investor orders in the best market and assure fair competition between the exchange markets and the OTC market and among brokers and dealers. *Id.* § 78k-1(a) (1) (C).

⁷ Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR-NASD-95-58 and should be submitted by December 27, 1995.

VI. Conclusion

For the reasons stated above, the Commission believes the rule change is consistent with the Act and, therefore, has determined to approve it.

It is therefore ordered, pursuant to Section 19(b) (2) of the Act, that the rule change SR-NASD-95-58 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36524; File No. SR-Phlx-95-76]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Uniform Listing and Trading Guidelines for Narrow-based Stock Index Warrants

November 29, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on October 27, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On November 22, 1995, the Phlx submitted Amendment No. 1 ("Amendment No. 1") to the proposal to establish a maintenance requirement with respect to the minimum number of securities that must comprise an index underlying

a warrant issuance, to clarify issues relating to settlement values for both narrow-based and broad-based index warrants, and to amend certain position limit levels applicable to narrow-based index warrants.¹ The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rules 722, 803, 1000A, and 1001A to establish uniform listing and trading guidelines applicable to narrow-based stock index warrants. The text of the proposed rule change and Amendment No. 1 thereto is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

1. Purpose

In view of the recent approval of the regulatory framework for stock index warrants on broad-based stock indexes,² the Exchange now proposes to establish uniform listing and trading guidelines for warrants based on narrow-based indexes. To accommodate the trading of warrants on narrow-based indexes, the Exchange proposes to modify the recently approved regulatory framework for broad-based index warrants.³ Thus, the Exchange proposes to conform the rules applicable to warrants on narrow-based indexes to those applicable to options on narrow-based indexes.

¹ Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, SEC, dated November 22, 1995.

² See Securities Exchange Act Release No. 36167 (Aug. 29, 1995).

³ The Exchange notes that a substantially similar regulatory scheme generally applies to broad-based index options and warrants.

⁸ 17 CFR 200.30-3(a) (12).